

ORDINANCE NO. 18 – 05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN  
AMENDING CHAPTER 10 AND CHAPTER 95 OF THE AUBURN  
MUNICIPAL CODE REGARDING ADMINISTRATIVE ENFORCEMENT AND  
NUISANCE ABATEMENT

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**THE CITY COUNCIL OF THE CITY OF AUBURN DOES ORDAIN AS  
FOLLOWS:**

**Section One: Code Amendment.** Sections 10.80 through 10.98 of Chapter 10 of Title I of the Auburn Municipal Code are hereby repealed and replaced in their entirety as set forth in the attached Exhibit "A".

**Section Two: Code Amendment.** Section 95.25 of Chapter 95 of Title IX of the Auburn Municipal code is hereby amended to read as follows:

**§ 95.25 PURPOSE.**

This subchapter is adopted pursuant to Article 6, Chapter 10, Part 2, Division 3 of the Government Code §§ 38771 et seq. for the purpose of declaring what constitutes a nuisance, establishing procedures for the notification and abatement of nuisances, and establishing procedures to collect abatement and related administrative costs. It is hereby declared that adoption of this subchapter is in the public interest in that it promotes the health, safety and welfare of the residents of Auburn.

**Section Three: Code Amendment.** The definition of **ENFORCEMENT OFFICER** in Section 95.26 of Chapter 95 of Title IX of the Auburn Municipal code is hereby amended to read as follows:

**ENFORCEMENT OFFICER** means any city employee or agent of the city with the authority to enforce any provision of this code designated by the City Manager.

**Section Four: Code Amendment.** The definition of **SERVICE** in Section 95.26 of Chapter 95 of Title IX of the Auburn Municipal Code is hereby repealed.

**Section Four: Code Amendment.** Section 95.27 of Chapter 95 of Title IX of the Auburn Municipal Code is hereby amended to read as follows:

**§ 95.27 DECLARATION OF NUISANCES.**

(A) *Unlawful Nuisances.* It shall be unlawful and a public nuisance for any responsible person to maintain property in the city, or to allow property in the city to be maintained, such that any of the following conditions exist thereon:

(1) *Unlawful outdoor storage and conditions.*

(a) The accumulation of abandoned, discarded, or dilapidated objects, including but not limited to junk; abandoned, wrecked, dismantled or inoperative vehicles; vehicle parts and equipment; machine parts, scrap material, appliances, furniture, household equipment and furnishings, shopping carts, containers, packing materials, scrap metal, wood, plant cuttings, rubbish and debris or

similar matter which constitutes a threat to public health or safety or renders any premises unsightly and detrimental to the general public welfare; provided, however, that nothing in this subsection shall be construed as prohibiting the orderly outdoor storage of business-related materials and inventory where permitted by applicable zoning designations, rules, approvals, or regulations.

(b) The accumulation of dirt, sand, gravel, concrete, litter, junk, debris or other similar material on the property, including if those materials could potentially be discharged into a storm drain system or otherwise violate the federal Clean Water Act.

(c) Attractive nuisances dangerous to members of the public unable to discover the nuisance condition, or recognize its potential danger, including, but not limited to abandoned, broken, neglected or unsupervised vehicles, machinery, equipment, lights, light fixtures, refrigerators and freezers, pools, ponds and excavations, as well as all other items and conditions identified in Penal Code § 402b.

(d) Materials or other items stacked above any fence or in any manner which could potentially be discharged into a storm drain system or otherwise violate the federal Clean Water Act; provided, however, that nothing in this subsection shall be construed to prevent the orderly outdoor storage of business-related materials and inventory above fence height where permitted by applicable zoning designations, rules, approvals, or regulations.

(e) The placement of items of business inventory, refuse containers, equipment, vehicles, or any other obstruction on a street,

sidewalk or parking areas developed or intended for use by the public or by invitees onto the property.

(f) Materials stored or stacked on property in a disorderly or unsightly manner or in a manner which could potentially be discharged into a storm drain system or otherwise violate the federal Clean Water Act.

(g) Boats, trailers, recreation vehicles, motor vehicles, parts thereof, or other articles of personal property which are left in a state of partial construction, dilapidation or disrepair; or which are parked or stored in violation of applicable zoning designations, rules, approvals, or regulations.

(h) Packing boxes, pallets, lumber, junk, trash, salvage materials, or other debris.

(i) The storage of firewood or other flammable materials other than in compliance with (1) standards relating to the safe storage of combustible materials established in writing by the Fire Chief; and (2) the city's Fire Code.

(2) *Landscaping/vegetation.*

(a) Dead, decayed, diseased, displaced or hazardous trees, weeds or other vegetation constituting unsightly appearance, a danger to public safety and welfare, a fire hazard, a detriment to neighboring property or property values or from which a continuous offensive odor emanates.

(b) Overgrown vegetation likely to harbor rats, vermin and other nuisances, growing into the public right-of-way, obstructing the necessary view of drivers on public streets or private driveways, or which constitutes a fire hazard or a detriment to neighboring property or property values.

(c) Failure to comply with the requirements or conditions set forth in any city zoning approval or permit applicable to the premises.

*(3) Trash, litter, trimmings, oil and debris.*

(a) The accumulation of litter, debris, trimmings or trash on any property, including sidewalks, gutters, storm drains, driveways, walkways, alleyways, parking lots or the public right-of-way or from which a continuous, offensive odor emanates.

(b) Pooled oil, water, or other liquid accumulation, flowing onto the street, or into a storm drain system, or excessive accumulations of grease or oil on paved surfaces or in storm drain systems.

*(4) Trash containers.*

(a) Trash, garbage or refuse cans, bins, boxes or other such containers or which emanate a continuous, offensive odor; provided, however, that nothing in this subsection shall be construed as prohibiting the outdoor storage of any type of trash receptacle if the receptacle is screened from view from a street, public right-of-way, or neighboring properties in a manner approved by the Director of Planning and Public Works and consistent with applicable zoning designations, rules or regulations.

(b) Any occupied property without regular and adequate trash collection service.

(c) Trash containers without secure, firmly fitting covers or evidencing an overflow of trash and/or other debris.

*(5) Buildings and structures.*

(a) Buildings which are dilapidated, abandoned, boarded up, partially destroyed, have broken windows or broken windows secured with wood or other materials or which are left in a state of partial construction, buildings subject to demolition pursuant to applicable provisions of this code or other authority, for which demolition has not been diligently pursued, and such buildings which are unpainted or where the paint on the building exterior is significantly cracking, peeling, chalking or worn off.

(b) Unsecured buildings constituting hazardous conditions or which invite or permit trespass or malicious mischief.

(c) Awnings, covers, canopies, umbrellas, screens, lights, light fixtures or other window coverings or building structures which are damaged, torn, severely faded, rusted, bent, unpainted or otherwise in substantial disrepair.

*(6) Fences and gates.*

(a) Fences or other structures on private property which are sagging, leaning, fallen, decayed, extend into the public right-of-way or are otherwise dilapidated or unsafe or violate the provisions of this code.

(7) *Graffiti.*

(a) Graffiti or other words, lettering or drawings not otherwise permitted by the provisions of this code, which remain on the exterior of any building, fence or wall more than 10 days after written notice to remove the same has been given by the Director of Planning and Public Works.

(8) *Parking limitations.*

(a) Vehicles, whether motorized or non-motorized, parked within any required setback or on any surface which has not previously been approved for parking pursuant to applicable provisions of this code.

(9) *Parking strips.*

(a) Allowing an accumulation of junk, rubbish, debris, or dead, decayed or overgrown vegetation in that area between the property line and the street adjacent to a given parcel commonly known as a "parkway."

(10) *Miscellaneous.*

(a) Any other condition or use of property which the Director of Planning and Public Works reasonably determines to be a threat to the health and welfare of the public by virtue of its unsafe, dangerous, hazardous, or offensive nature, or which is so out of harmony with the standards of properties in the vicinity so as to cause substantial diminution of the enjoyment, use or property values of such properties.

(B) *Additional unlawful nuisances.* It shall be unlawful and a public nuisance for any responsible person to maintain property in the city, or to allow property in the city to be maintained, such that any of the following conditions exist thereon:

(1) Unpainted buildings and those having dry rot, warping or termite infestation. Any building on which the exterior paint has deteriorated so as to permit decay, excessive checking, cracking, peeling, chalking, dry rot, warping or termite infestation as to render the building unsightly or in a state of disrepair;

(2) Buildings with windows containing broken glass or no glass at all, where the window is of a type which normally contains glass, which constitutes a hazard and/or invites trespassers or malicious mischief. Plywood or other material used to cover such window space, if permitted under this code, shall be painted in a color or colors compatible with the remainder of the building;

(3) Building exteriors, walls, fences, driveways, sidewalks or walkways which are maintained in such condition as to become defective or unsightly or are materially detrimental to nearby properties and improvements;

(4) Construction equipment, farm machinery, or machinery of any type or description parked or stored on property when it is visible from a street or other public right-of-way, except:

(a) During excavation, construction or demolition operations covered by an active building permit on the subject property or an adjoining property;



- (b) During active farming operations; or
- (c) When such machinery is stored in an agricultural or industrial zoning district in compliance with the provisions of this code;
- (5) Property which lacks appropriate landscaping, turf or plant material so as to cause excessive dust to escape the site;
- (6) Any condition or activity which is a "nuisance" or a "public nuisance" as defined in Sections 3479 and 3480 of the Civil Code of the State of California or which is specifically declared to constitute a nuisance or public nuisance by any statute of the State of California or by any ordinance of the City of Auburn;
- (7) The operation or maintenance of any business, trade or profession in violation of Chapter 33 of this Code, or lack of a proper certificate of occupancy;
- (8) The making or continuing, or causing to be made or continued, of any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, safety or peace to any reasonable person of normal sensitiveness within the city;
- (9) The occurrence of criminal activity at any premises which threatens the life, health, safety or welfare of the public;
- (10) The violation of any provisions of the California Building Standards Code, Title 24 of the California Code of Regulations, which have been adopted, as amended, by the city;

(11) Property maintained in such condition as to become so defective, unsightly or in such condition of deterioration or disrepair that the same causes depreciable diminution of the property values of surrounding properties or is materially detrimental to proximal properties and improvements;

(12) Maintenance of premises so out of harmony or conformity with the maintenance standards of adjacent properties as to cause substantial diminution of the enjoyment, use or property values of such adjacent properties;

(13) Any other condition which the Director of Planning and Public Works reasonably determines is contrary to the public peace, health, and safety or otherwise prevents the enjoyment or reasonable use of property.

(14) Any violation of this code or any other ordinance of the city, including any code adopted by reference.

**Section Five: Code Amendment.** Section 95.28 of Chapter 95 of Title IX of the Auburn Municipal Code is hereby amended to read as follows:

**§ 95.28 AUTHORITY TO INSPECT.**

Enforcement officers may enter upon any property or premises within the city as allowed by law to ascertain whether the provisions of this code are being obeyed, and to make any examination and surveys as may be necessary in the performance of their enforcement duties. These inspections may include the taking of photographs, samples, or other physical evidence. If an owner or occupant of property or his or

her agent refuses to consent to entry and inspection, an enforcement officer may seek an administrative inspection warrant to enter the property or premises for any lawful purpose.

**Section Six: Code Amendment.** Sections 95.29 through 95.43, inclusive, of Chapter 95 of Title IX of the Auburn Municipal Code are hereby repealed and replaced as follows:

**§ 95.29 NUISANCE ABATEMENT AND ENFORCEMENT.**

Whenever an enforcement officer determines that any nuisance conditions exist, he or she may require or provide for abatement pursuant to Chapter 10 of this code. In addition, criminal, civil or administrative sanctions may be imposed for the maintenance of a public nuisance as set forth in Chapter 10 of this code.

**Section Seven: Code Amendment.** Section 95.44 of Chapter 95 of Title IX of the Auburn Municipal Code is hereby amended to read as follows:

**§ 95.44 SUMMARY ABATEMENT**

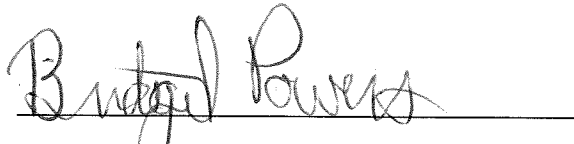
The City Manager or his or her designee may immediately abate, without observance of any notice or consent requirements set forth in this subchapter or Chapter 10, any condition or nuisance that constitutes an immediate threat to public health, safety, or welfare, or a serious and imminent danger to the public. Whenever the city causes a summary abatement under this section, it shall provide the responsible person with a post-abatement hearing to contest the validity of the summary abatement under the procedures set forth in Chapter 10 for administrative hearings.

**Section Eight: California Environmental Quality Act.** The City Council has considered all of the evidence in the record, including the staff reports, the testimony received during the meeting on the matter held by the City Council, and hereby determines that that the adoption of this Ordinance will not have a significant effect on the environment. This Ordinance is therefore exempt from California Environmental Quality Act (CEQA) review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations. The ordinance will not result in any foreseeable environmental impact. Additionally, the ordinance is not a "project" under CEQA Guidelines section 15378, because it is an activity that will not cause a direct (or reasonably foreseeable indirect) physical change in the environment. If this Ordinance is found subject to CEQA, it is categorically exempt therefrom pursuant to Title 14, Section 15305 of the California Code of Regulations (Minor Alterations in Land Use Limitations).

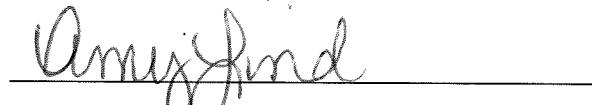
**Section Nine: Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance or the rules adopted hereby. The City Council of the City of Auburn hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

**Section Ten: Publication and Effective Date.** This ordinance shall take effect 30 days after final adoption. The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

DATED: June 25, 2018

  
Bridget Powers, Mayor

ATTEST:

  
Amy Lind, City Clerk

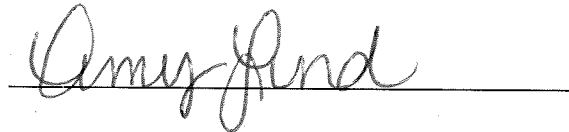
I, Amy Lind, City Clerk of the City of Auburn, hereby certify that the foregoing ordinance was duly passed at a regular meeting of the City Council of the City of Auburn held on the 25th day of June 2018 by the following vote on roll call:

Ayes: Spokely, Kirby, Maki, Powers

Noes:

Absent: Berlant

Abstain:

A handwritten signature in cursive script, reading "Amy Lind", is written over a horizontal line.

Amy Lind, City Clerk

## **Exhibit "A"**

### ***Administrative Enforcement***

- 10.80 Purpose and intent
- 10.81 Definitions
- 10.82 Notice of violation and/or abatement order
- 10.83 Issuance of Notice of Violation and/or abatement order
- 10.84 Authority to inspect
- 10.85 Notice of pending administrative enforcement
- 10.86 Administrative citations
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- 10.88 Contents of administrative citation
- 10.89 Consideration in other proceedings
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- 10.91 Amount of Administrative Fines and Penalties
- 10.92 Payment of fines and penalties
- 10.93 Request for administrative hearing
- 10.94 Administrative hearing
- 10.95 Judicial review
- 10.96 Collection of delinquent fines and penalties and other remedies
- 10.97 Wobbler

### **§ 10.80 Purpose and intent.**

The City Council determines that the enforcement of this code, any uniform code or other code it adopts by reference, and any other ordinance of the city is an important public service and is vital to protecting the public. The City Council further determines there is a need for alternative methods of code enforcement in addition to other enforcement options available. This chapter is intended to promote the general health, safety and welfare of the public and provide uniform, fair, and efficient code enforcement.

### **§ 10.81 Definitions.**

Unless specifically defined below, words or phrases used in this chapter shall be interpreted to give them the meaning they have in common usage and to give this chapter the most reasonable application.

**ABATEMENT** means correction of a nuisance. When the city acts to abate and/or issues an abatement order, **ABATEMENT** includes any and all steps taken by the city to correct a nuisance or violation of this code, including, but not limited to, investigation, hearings, imposition of fines and penalties, acquisition of warrants, entry and physical correction of violations, and collection of any and all fines, penalties and/or costs of whatever kind or nature.

**ADMINISTRATIVE COST(S)** means all costs incurred by or on behalf of the city regarding enforcement of this code, from the first discovery of the violation of this code through the appeal process and any court proceeding, and until compliance is achieved, including, but



not limited to, staff time investigating the code violation, inspecting the property where the code violation occurred, acquisition of warrants, preparing investigative reports, sending notices of violations, administrative citations, and/or abatement orders, preparing for and attending any appeal or administrative hearing, collection of any and all fines, penalties, and/or costs of whatever kind and nature, and attorneys' fees.

**APPELLANT** means a responsible party who seeks an administrative hearing on a notice of violation, abatement order, and/or administrative citation in the manner required by this chapter.

**CITY MANAGER** means the City Manager or his or her designee.

**CODE VIOLATION(S)** means any violation of this code or any other ordinance of the city, including any codes adopted by reference and any violation of any condition imposed upon issuing any permit, license, or other approval (e.g., subdivision map, use permit, variance, zoning clearance) under this code or any other ordinance of the city.

**CODE VIOLATION(S)** shall also include a "nuisance" as defined in Section 95.25 et seq. of this code.

**ENFORCEMENT OFFICER** means any city employee or agent of the city with the authority to enforce any provision of this code designated by the City Manager.

**HEARING OFFICER** means the City Manager or his or her designee.

**NOTICE OF VIOLATION** means any notice that informs a responsible party that a code violation has occurred as described in section 10.83 of this chapter including, but not limited to, an abatement order.

**RESPONSIBLE PARTY** means any of the following:

1. A party who, by action or inaction, causes, maintains, permits or allows a code violation;
2. A party whose agent, employee, or independent contractor, by action or inaction, causes, maintains, permits or allows a code violation;
3. An owner, in whole or in part, of real property on which a code violation occurs;
4. A lessee or sublessee with the current right of possession of real property on which a code violation occurs;
5. A party that uses real property on which a code violation occurs;
6. An on-site manager who regularly works on real property on which a code violation occurs and who is responsible for the business or other activities on that real property;
7. The owners, majority stockholders, corporate officers, trustees, general partners and any other party with the authority to act for a legal entity that is a responsible party under subsections 1. through 6. above;

8. If a party is a minor or incompetent, the parents or guardians of such party shall be deemed the responsible party.

9. A "responsible person" as that term is defined in Section 95.26 of this code.

**§ 10.82 Notice of violation and/or abatement order.**

A. Whenever an enforcement officer determines that a code violation exists, the enforcement officer may issue a notice of violation and/or an abatement order to any responsible party. The notice of violation and/or abatement order shall include:

1. A description of the condition creating or constituting the code violation(s) and the code section(s) or other ordinance(s) violated;
2. The address where the code violation occurs;
3. The name(s) of the responsible part(ies) and any other involved party known to the enforcement officer;
4. The date and, if relevant, time at which the code violation was observed;
5. If applicable, a list of any corrections to bring the property into compliance including, but not limited to, an abatement order;
6. A description of the procedure for requesting an administrative hearing to contest the notice of violation and/or abatement order;

7. A deadline by which to correct or abate the code violation;
8. The signature of the enforcement officer issuing the notice of violation and/or abatement order;
9. The date the notice of violation and/or abatement order is issued.

C. The failure of a notice of violation or an abatement order to satisfy the requirements of this section shall not affect the validity of the notice of violation or abatement order or any other enforcement proceedings under this code.

D. Except as otherwise provided by law or any other ordinance of this city, an enforcement officer may issue an administrative citation without first issuing a notice of violation or an abatement order.

**§ 10.83 Issuance of Notice of Violation and/or abatement order.**

A notice of violation and/or an abatement order may be issued in one or more of the following ways:

A. An enforcement officer may personally serve the notice of violation and/or abatement order on the responsible party;

B. An enforcement officer may mail the notice of violation and/or abatement order to the responsible party by first-class mail to the last known address of the responsible party and/or to any address which the responsible party has used in dealings with the city;

C. An enforcement officer may post a copy of the notice of violation and/or abatement order on the subject property in a conspicuous place for a property-related code violation and, in which case, the enforcement officer shall also mail a copy of the notice of violation and/or abatement order to the responsible party in the manner described in subsection B. of this section.

#### **§ 10.84 Authority to inspect.**

Enforcement officers may enter upon any property or premises within the city as allowed by law to ascertain whether the provisions of this code are being obeyed, and to make any examination and surveys as may be necessary in the performance of their enforcement duties. These inspections may include the taking of photographs, samples, or other physical evidence. If an owner or occupant of property or his or her agent refuses to consent to entry and inspection, an enforcement officer may seek an administrative inspection warrant to enter the property or premises for any lawful purpose.

#### **§ 10.85 Notice of pending administrative enforcement.**

An enforcement officer may record with the Placer County Recorder a notice against a property which is the subject of an administrative enforcement action to give notice to potential transferees of the property of code violations thereon. A notice of pending administrative action shall be on a form approved by the City Manager and shall describe the nature of the administrative action and refer to the code provision governing the pending administrative action.

### **§ 10.86 Administrative citations.**

If a responsible party violates this code or fails to correct a code violation within the time prescribed in a notice of violation and/or an abatement order, an enforcement officer may issue an administrative citation to each and every responsible party who knew or reasonably should have known of that notice of violation.

### **§ 10.87 Administrative fines and penalties.**

Any violation of a provision of this code, any code it adopts by reference, or other applicable law, may be subject to an administrative fine or penalty pursuant to this chapter. This also includes any violation of any condition imposed upon the issuance of any permit, license, or other approval (e.g., subdivision map, use permit, variance, zoning clearance, etc.) pursuant to this code.

A. Each and every responsible party regarding a code violation(s) is jointly and severally liable for all fines and/or penalties imposed for the code violation(s).

B. A code violation that exists for more than one day shall be considered a separate and distinct code violation for each and every day it exists. Each daily code violation may be subject to the maximum fine or penalty permitted under this chapter.

C. An administrative citation may charge a code violation for one or more days on which a code violation exists or existed and for violation of one or more code sections.

D. The administrative fines and penalties prescribed in this chapter are in addition to, and do not preclude imposition of, any other remedies, criminal, civil, or administrative, available to the city. Imposition of administrative fines or penalties shall be at the sole discretion of the enforcement officer.

**§ 10.88 Contents of administrative citation.**

A. An administrative citation shall include:

1. A description of the condition creating the code violation(s) and the code section(s) or other ordinance(s) violated;
2. The address where the code violation occurs;
3. The name(s) of the responsible part(ies) and any other involved persons;
4. The date and, if relevant, time at which the code violation was observed;
5. The amount and due date of the fine and/or penalty;
6. A description of the procedure to pay the fine and/or penalty;
7. A description of the procedure for requesting an administrative hearing to contest the administrative citation;
8. If applicable, a list of any corrections to bring the property into compliance including, but not limited to, an abatement order;

9. A deadline by which to correct or abate the code violation(s);

10. A statement that any unpaid fines and/or penalties may be placed as a special assessment or lien against the property where a code violation occurs or occurred;

11. The signature of the enforcement officer issuing the administrative citation;

12. The date of the administrative citation was issued;

13. Any other information deemed necessary for enforcement or collection of the administrative fines and/or penalties.

B. An enforcement officer may issue an administrative citation in conjunction with a notice of violation and/or an abatement order.

C. The failure of an administrative citation to satisfy the requirements of this section shall not affect the validity of the administrative citation or any other enforcement proceedings under this code.

#### **§ 10.89 Consideration in other proceedings and applications.**

A. The City Council, the Planning Commission, the Historic Design Review Commission, any other board or commission of the city, and city staff may consider the fact that a responsible party has been issued a notice of violation, abatement order, and/or administrative citation when determining whether to grant, suspend, revoke, or deny any permit, license, or other approval, regarding a matter related to



the condition causing the code violation, and may consider such notice of violation, abatement order, and/or administrative citation to be evidence that the responsible party has committed acts that threaten the health, safety, and welfare of the general public.

B. The City Council, the Planning Commission, the Historic Design Review Commission, any other board or commission of the city, and city staff may impose a moratorium on issuing new, renewed, or revised permits, licenses, or other approvals to a responsible party pending satisfactory resolution of a notice of violation, abatement order, and/or payment of an administrative citation.

#### **§ 10.90 Issuance of administrative citations.**

An administrative citation may be issued in one or more of the following ways:

A. An enforcement officer may personally serve the administrative citation on the responsible party. The responsible party is required to sign a copy of the administrative citation showing his or her receipt, but his or her failure to do so shall have no effect on the enforcement of the administrative citation.

B. An enforcement officer may mail the administrative citation to the responsible party by first-class mail to the last known address of the responsible party and/or to any address which the responsible party has used in dealings with the city.

C. An enforcement officer may post a copy of the administrative citation on the subject property in a conspicuous place for a property-related code violation and, in which case, the enforcement officer shall

also mail a copy of the administrative citation to the responsible party in the manner described in subsection B. of this section.

### **§ 10.91 Amount of Administrative Fines and Penalties.**

A. For code violations that would otherwise be an infraction, administrative fines shall not exceed \$100 for a first violation, \$200 for a second violation of the same code section within one year, and \$500 for each additional violation of the same code section within one year.

B. For code violations of local building and safety codes, administrative fines shall not exceed \$100 for a first violation, \$500 for a second violation of the same provision within one year, and \$1,000 for each additional violation of the same provision within one year of the first violation.

C. If the code violation pertains to building, plumbing, electrical, mechanical or other similar structural or zoning issues and does not pose an imminent or immediate threat of harm to persons or property, or to public health, welfare or safety, the responsible party shall be provided a notice of violation including not less than 15 days in which to abate or otherwise correct the code violation(s) prior to the imposition of an administrative fine or penalty. The determination of timely compliance, abatement, mitigation or elimination of the code violation shall be made by the enforcement officer or other authorized city official.

D. Any code violation may be subject to an administrative penalty not exceeding \$1,000 per violation.

E. Administrative fines and/or penalties not paid prior to their due date shall result in the imposition of a penalty and interest for every day of delinquency, as set forth in a resolution of the City Council.

F. Each responsible party may be charged with a separate offense for each and every day during any portion of which any code violation is committed, continued or permitted by such responsible party.

#### **§ 10.92 Payment of fines and penalties.**

A. All fines and penalties are due on the day specified in the notice of violation, abatement order, and/or administrative citation.

B. Fines and penalties shall be payable to the city at City Hall, 1225 Lincoln Way, Auburn, CA 95603, or to a collection agency if the fine and/or penalty has been assigned to a collection agency. Payment may be made by credit card, or by mailing the fine and/or penalty amount paid by check or money order to the City Clerk at the same address. Cash payments may only be made in person at the same address.

C. Payment of a fine or penalty pursuant to this chapter shall not excuse or discharge any continued or repeated code violation.

D. Pending an administrative hearing by a hearing officer, payment of a fine and/or penalty may be stayed if the City Manager determines, pursuant to Section 10.93, that a responsible party is unable to pay the fine and/or penalty.

### **§ 10.93 Request for administrative hearing.**

A. A responsible party to whom a notice of violation, abatement order, and/or an administrative citation is issued may request an administrative hearing within 15 days of the issuance of the notice of violation, abatement order, and/or administrative citation. Failure to timely request an administrative hearing in the manner required by this chapter constitutes a waiver of the administrative hearing and a failure to exhaust administrative remedies.

B. A request for an administrative hearing shall be made in writing and filed with the City Clerk at City Hall, 1225 Lincoln Way, Auburn, CA, 95603, and shall state all grounds for appeal which the appellant wishes the city to consider.

C. At the time of submitting the request for an administrative hearing, the appellant requesting the administrative hearing shall pay a deposit of any fine and/or penalty imposed by a notice of violation, abatement order, and/or an administrative citation, in the event the fine and/or penalty has not yet been paid. No request for an administrative hearing shall be accepted without payment of the deposit of the fine and/or penalty amount at the time the administrative hearing request is filed. The city may waive or defer the administrative hearing fee upon written request for good cause shown. Good cause may include severe economic hardship, significant attempts to comply with a notice of violation and/or abatement order, and other factors indicating good faith attempts to comply.

D. Enforcement of a notice of violation, abatement order, and/or an administrative citation shall be stayed during the pendency of an

administrative hearing therefor which is properly and timely filed, unless a stay would jeopardize public health, safety, or welfare.

E. An appellant may request one continuance of an administrative hearing provided he or she does so in writing before the date of the administrative hearing and states a reasonable basis for the request. Unless the city issues a written notice of continuance, the administrative hearing shall take place on the date, time and location specified in a notice of administrative hearing issued to the appellant. An appellant's failure to attend an administrative hearing shall constitute an abandonment of the request for the administrative hearing and a failure to exhaust administrative remedies.

F. Unless otherwise required by the California Building Code, an adopted uniform code, or other provision of law, administrative hearings shall be conducted and heard by a hearing officer.

#### **§ 10.94 Administrative hearing.**

A. The administrative hearing shall be conducted by the hearing officer on the date, time, and location specified in the notice of hearing transmitted to the appellant. Notice(s) of violation, abatement order(s), administrative citation(s), and other reports prepared by an enforcement officer concerning a code violation(s) shall be accepted by the hearing officer as prima facie evidence of the facts stated in such documents. The hearing officer shall allow the appellant an opportunity to testify at the administrative hearing and to present evidence about any code violation specified in the notice of violation, abatement order, and/or administrative citation. The enforcement officer or other

representatives of the city may, but is not required to, attend the administrative hearing.

B. The hearing officer may continue an administrative hearing from time to time and allow an appellant additional time to remedy a code violation. In addition, the hearing officer may request additional information or evidence from the appellant.

C. An administrative hearing need not be conducted in accordance with the technical rules of evidence. Any relevant evidence may be admitted if it is evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might consider such admission improper in a civil or criminal proceeding. Irrelevant or unduly repetitious evidence shall be excluded.

D. After considering all testimony and evidence submitted at the administrative hearing, the hearing officer shall issue a written decision to affirm, modify or dismiss the notice(s) of violation, abatement order(s), and/or administrative citation(s). The decision shall include the hearing officer's findings, as well as information regarding the appellant's right to seek judicial review of the decision and the time in which to do so. The city shall issue the appellant a copy of the hearing officer's written decision (the "notice of decision"). The decision of the hearing officer shall be final. If the hearing officer determines that the notice(s) of violation, abatement order(s), and/or administrative citation(s) should be affirmed, the fine and/or penalty amount on deposit with the city, if any, shall be retained by the city.

#### **§ 10.95 Judicial review.**

An appellant may seek judicial review of a hearing officer's decision by filing a petition for review with the superior court, pursuant to Government Code Section 53069.4, within 20 days after service of the notice of decision on appellant. For purposes of this section, "service" means personal service or deposit in the mail, first-class, postage prepaid, and return receipt requested to the last known address of the appellant and/or to any address which the appellant has used in dealings with the city.

**§ 10.96 Collection of delinquent fines and penalties and other remedies.**

A. The city may pursue any and all legal and equitable remedies for the collection of fines, penalties, interest, administrative costs, and attorney's fees incurred. Resort to any one remedy shall not foreclose subsequent or simultaneous resort to any other.

B. The city may seek to enforce any notice of violation, abatement order, administrative citation, fine, penalty, interest, administrative costs, and attorney's fees by confirmation from a court of competent jurisdiction. Any of such judicially confirmed may be enforced through all normal enforcement measures, including without limitation, criminal contempt proceedings upon a subsequent violation of such order.

C. Administrative costs may be recorded as a lien or special assessment against a property on which a code violation occurred. Prior to recording a lien or special assessment, the city shall prepare a cost report itemizing the amount owed by the responsible party and give known responsible party reasonable opportunity to be heard with

respect to that cost report. The city shall comply with any other law applicable to the recording of any delinquent costs and interest as a lien on the property, or as a special assessment.

D. The notice of violation, abatement order, and administrative citation procedures described in this chapter do not preclude the city from recovering any code violation abatement costs and/or administrative costs incurred by the city in performing its code enforcement efforts.

E. A prevailing party shall be entitled to recover attorney's fees in an amount not to exceed the amount of attorney's fees incurred by the city in such action. Recovery by the city of administrative costs shall be in addition to any fine or penalty imposed on the responsible party.

#### **§ 10.97 Wobbler.**

Any person violating any provision or failing to comply with any mandatory requirements of this Code shall be guilty of a misdemeanor except (1) where a violation of this Code is expressly stated to be an infraction or (2) the prosecuting attorney determines to prosecute a violation which would otherwise be a misdemeanor as an infraction in the interests of justice.